

REMARKS

Reconsideration and further examination is respectfully requested. Claim 1 is pending in the current applications. Applicant hereby presents its arguments in response to the rejection issues by the Examiner, as set forth below.

Claim Rejection – Section 103:

The Examiner has rejected claim 1 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6, 165,147 issued to Murrow in view of U.S. Patent No. 6,068,606 issued to Castel et al. This rejection is respectfully traversed.

The examiner asserts that "...Murrow discloses the claimed invention with the exception of fastening means attached to the center of the elongated strip for removably fastening the belt assembly to the first back element so as to impart a stabilizing force from the elongated strip through the fastening means to the back element." See Office Action, page 2, paragraph 3, line 5- page 3, paragraph 1, line 1. The examiner further states that "it would have been obvious to one of ordinary skill in the art to incorporate the removable belt 85 of Castel within the back brace of Murrow for the purpose of compressing or restricting movement of the tissue around the waist of the wearer so as to provide greater stability to the wearer's spine." See Office Action, page 3, paragraph 1, lin. 3-6.

The combination of Murrow and Castel do not provide all of the limitations set forth in claim 1 of applicant's invention. Therefore, the examiner has not demonstrated a *prima facie* case of obviousness. To establish such a case, three basic criteria must be met. First, there must

be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Murrow discloses a back brace having a wide front belt portion 12 with an enlarged rear portion. Col. 3, lin. 1-2. "When the front belt portion 12 fits snugly against the user's stomach, the brace 10 is retained in position when the user threads a first strap 24 in the direction of [an] arrow B through a buckle 26 at one end of a second strap 28." Col. 3, lin. 14-18. The Murrow front belt portion 12 is not a separate feature attached to the brace 10, but rather is part of the brace 10. This configuration is in contrast to the removable iliac crest belt assembly disclosed in claim 1 of the applicant's invention.

Claim 1 discloses "fastening means, attached to the center portion of the elongated strip, for removably fastening the belt assembly to the first back element such that, when locked about the waist of the person and fastened to the back element of the body brace, the belt assembly interlocks with the back element so as to impart stabilizing force from the elongated strip through the fastening means to the back element." The front belt portion 12 of the Murrow brace is not removable. Therefore, the Murrow disclosure does not contain fastening means for securing the belt to a first back element of a brace. Castel does not supply the missing limitations necessary to establish a prima facie case of obviousness.

Castel discloses a “back support brace comprising a back panel or a back section 5, a left side panel, left side section or left wing 6 and a right side panel, right side section or right side wing 7.” Col. 4, lin. 11-14. Moreover, “the left side panel 6 and the right side panel 7 have an outer surface 20 and an inner surface 21.” Col. 4. lin. 30-31. Murrow also discloses that “[f]irst, second and third side left side belt loops 51, 52, and 53 are formed on the inner surface 21 of the left side panel 6...[f]irst, second and third right side belt loops 54, 55, and 56 are formed on the inner surface 21 of the right side section 7.” Col. 5, lin.16-21.

Castel explicitly states that “the belt loops 51, 52, 53, 54, 55, and 56 may include fastening means such that each belt loop may be opened and then closed to receive or encircle the belt 85 of the wearer.” Col. 6, lin. 10-14. Figure 1 of the Castel disclosure illustrates that the belt 85, is in fact, the wearer’s pants belt that is threaded through the belt loops 51, 52, 53, 54, 55, and 56 in order to stabilize the brace at the base of the wearer’s spine. The fastening means for the iliac crest belt assembly in claim 1 of the applicant’s invention, however, is structurally and patentably distinct from that disclosed in Castel.

As set forth above, the fastening means in claim 1 are attached to the center portion of the elongated strip of the back belt. Claim 1 also discloses that the elongated strip has first and second ends such that “the center portion [is] positioned substantially against the lumbar spinal region of the person and the first and second ends are positioned against the front of the person.” Castel’s fastening means are not attached to the center portion of its brace, but to the right and left side panels 6 and 7 located on the inner portions 21 and 22 of the brace. The right and left side panels 6 and 7 containing the fastening means are not, and cannot be positioned in the center portion of the brace as in the applicant’s invention. These limitations are explicitly set forth in

claim 1 of the applicant's invention. Castel does supply the limitations missing in Murrow, and cannot be combined with Murrow in the manner suggested by the examiner. Accordingly, the rejection is respectfully traversed.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Kimberly B. Whitehead, Applicants' Attorney at (202) 842-1784 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

June 17, 2005  
Date

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